

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**VIRNETX INC. AND
LEIDOS INC.**

,

Plaintiffs,

v.

APPLE INC.

Defendant.

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Civil Action No. 6:12-cv-855

JURY TRIAL DEMANDED

**DEFENDANT APPLE INC.'S ESTIMATES OF TIME
FOR JURY SELECTION AND TRIAL**

In accordance with the Court's Docket Control Order, Apple provides the following estimates of time for jury selection and trial.

I. Timing for Trial with Liability/Damages and Willfulness Phases

Apple provides the following estimates based on the Court's July 29, 2016 order bifurcating willfulness from liability and damages. D.I. 500 at 15.

A. Jury Selection

Apple requests that each side receive 30 minutes for voir dire, with the understanding that the same jury would decide liability/damages and willfulness.¹

B. Liability/Damages Phase

For the liability/damages phase, Apple anticipates that it will require, and hereby requests that the Court provide, six days of trial, 45 minutes for opening statements, and 45 minutes for

¹ Should different juries decide liability/damages and willfulness, Apple requests that each side receive 30 minutes of voir dire for the liability/damages phase and 30 minutes of voir dire for the willfulness phase.

closing arguments. For direct, cross, and rebuttal examinations, Apple requests 15 hours per side.

Apple bases these estimates and requests on the three features accused of infringement in this case, the number of Will-Call Trial Witnesses (8 for VirnetX and 5 for Apple). VirnetX, for example, intends to call two named inventors (Messrs. Munger and Short), its CEO (Mr. Larsen), an Apple employee (Patrick Gates), a technical expert (Dr. Jones), a survey expert (Dr. Wecker), and a damages expert (Mr. Weinstein) (D.I. No. 561). Apple intends to call live two engineers to describe the functionality of the accused products (Messrs. Patience and Thirumalai), a technical expert (Dr. Blaze), one survey expert (Dr. Jay), and a damages expert (Mr. Bakewell) (D.I. 586).

Apple's request is also reasonable in light of the time it took to try the September 2016 -417 Action trial and the consolidated trial. In the September 2016 -417 Action trial, the Court granted 12 hours per side for direct and cross-examination. -417 D.I. 979. That case, however, was significantly less complex than this case because the jury had to decide infringement for only one accused features (FaceTime), whereas in this case, the jury must decide infringement for three, distinct accused features (FaceTime, VPN On Demand, and iMessage). Moreover, this case has a similar level of complexity to the consolidated trial, for which the Court granted 15 hours per-side for direct and cross-examination. D.I. 404. Although willfulness has now been bifurcated, the number of accused features (three) in this case is similar to the number of accused features in the consolidated trial (four). To sufficiently rebut VirnetX's wide-ranging allegations, Apple estimates it will require, and requests that the Court provide, six days of trial.

C. Willfulness Phase

Apple anticipates that it will require, and hereby requests that the Court provide, two days of trial, 30 minutes for opening statements, and 30 minutes for closing arguments for the willfulness phase.² For direct, cross, and rebuttal examinations, Apple requests 5 hours per side.

Apple believes these estimates are reasonable based on the witnesses Apple intends to call live (Messers. Patience and Kushan). VirnetX has not stated which witnesses it intends to call in the willfulness phase, but, as mentioned above, VirnetX lists 8 witnesses as will call. Moreover, Apple anticipates that the willfulness phase will include evidence not introduced during the liability/damages phase, including evidence concerning Apple's redesigns and the PTO proceedings related to VirnetX's patents. To sufficiently rebut VirnetX's willfulness allegations against FaceTime and VPN On Demand, Apple estimates it will require, and requests that the Court provide, two days of trial.

II. Timing for Trial with Direct Infringement and Indirect Infringement/Damages/Willfulness Phases

Should the Court grant Apple's motion to phase the trial (D.I. 545), Apple provides the following estimates.

A. Jury Selection

Apple requests that each side receive 30 minutes for voir dire, with the understanding that the same jury would decide both phases.³

² Apple provides these estimates under the assumption that the same jury will decide liability/damages and willfulness. If a new jury is impaneled, Apple requests 45 minutes for opening, 45 minutes for closing, and 8 hours per side for direct, cross, and rebuttal examinations so it has sufficient time to introduce a new jury to the case.

³ Should different juries decide liability/damages and willfulness, Apple requests that each side receive 30 minutes of voir dire for the direct infringement phase and 30 minutes of voir dire for the indirect infringement/damages/willfulness phase.

B. Direct Infringement Phase

For the direct infringement phase, Apple anticipates that it will require, and hereby requests that the Court provide, 3 days of trial, 30 minutes for opening statements, and 30 minutes for closing arguments. For direct, cross, and rebuttal examinations, Apple requests 8 hours per side.

Apple bases these estimates on the witnesses it expects to call for the direct infringement phase (Messrs. Patience and Thirumalai and Dr. Blaze) and the witnesses it anticipates VirnetX calling (Messrs. Short and Munger and Dr. Jones). Apple's estimate is also reasonable based on the total time for both the 2016 -417 trial (12 hours per-side) and for the consolidated trial (15 hours per side).

C. Indirect Infringement/Damages/Willfulness Phase

Apple anticipates that it will require, and hereby requests that the Court provide, 5 days of trial, 45 minutes for opening statements, and 45 minutes for closing arguments for the indirect infringement/damages/willfulness phase.⁴ For direct, cross, and rebuttal examinations, Apple requests 12 hours per side.

Apple bases these estimates on the parties' four damages-related will-call witnesses (Dr. Wecker, Mr. Weinstein, Dr. Jay, and Mr. Bakewell) and Apple's two, live will-call witness witnesses for willfulness (Messrs. Patience and Kushan). Moreover, Apple anticipates that this phase will include evidence not introduced during the direct infringement phase, including evidence concerning Apple's redesigns and the PTO proceedings related to VirnetX's patents.

⁴ Apple provides these estimates under the assumption that the same jury will decide direct infringement and indirect infringement/damages/willfulness. If a new jury is impaneled, Apple requests 45 minutes for opening, 45 minutes for closing, and 15 hours per side for direct, cross, and rebuttal examinations so it has sufficient time to introduce a new jury to the case.

III. Conclusion

In sum, Apple requests the following times for the liability/damages phase and the willfulness phase:

Event	Time for Liability/Damages Phase	Time for Willfulness Phase
Voir Dire	30 minutes	N/A
Opening	45 minutes	45 minutes
Direct/Cross-Examination	15 hours	5 hours
Closing	45 minutes	45 minutes

Should the Court grant Apple's motion to phase the trial, Apple requests the following times for the direct infringement phase and the indirect infringement/damages/willfulness phase

Event	Time for Direct Infringement Phase	Time for Indirect Infringement/Damages/Willfulness Phase
Voir Dire	30 minutes	N/A
Opening	30 minutes	45 minutes
Direct/Cross-Examination	8 hours	12 hours
Closing	30 minutes	45 minutes

Dated: March 1, 2018

Respectfully submitted,

/s/ Joseph A. Loy

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ATTORNEYS FOR APPLE INC.

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3) on this the 1st day of March 2018.

/s/ Joseph A. Loy